

**DECISION NOTICE**  
**HARRIS LAND AND CATTLE COMPANY CONSERVATION EASEMENT**

Prepared by Region 4, Montana Fish, Wildlife & Parks  
February 24, 1998

**PROPOSAL**

The Montana Fish, Wildlife & Parks (MFWP) proposes to purchase and monitor a conservation easement on properties owned by the Harris Land and Cattle Company. The proposal includes the purchase of an easement on approximately 10,000 acres on the Harris Land and Cattle Company Ranch. The total purchase price for the proposed easement is \$1,500,000.00 plus the cost of implementing the grazing system (approximately \$35,000.00). The funds for the purchase will come from the Habitat Montana Program.

The specific terms of the easement in their entirety are contained in a separate legal document which is the "Deed of Conservation Easement". This document lists MFWP's and landowners' rights under the terms of the easement as well as restrictions on landowner activities. The rights of both parties and restrictions on landowner activities were negotiated with and agreed to by MFWP and the landowners. The intent of these rights and restrictions is to preserve important wildlife habitats in perpetuity while maintaining the agricultural, residential and public recreational uses which have occurred on the land.

**MONTANA ENVIRONMENTAL POLICY ACT PROCESS**

FWP is required to assess the impacts of the proposal to the human and physical environment. The Harris Land and Cattle Company conservation easement proposal and its effects were documented by MFWP in an Environmental Assessment (EA) to satisfy the Montana Environmental Policy Act (MEPA). A 30 day public comment period ran from January 12, 1998 through February 12, 1998. Public notices of the proposed action were covered extensively in area newspapers and a public hearing was held at the Region Four Fish, Wildlife and Parks Headquarters in Great Falls on February 4, 1998. Approximately 150 copies of the Environmental Assessment were mailed or delivered to adjacent landowners, sportsman groups, government agencies and other interested parties. Representatives from MFWP met with the Chouteau County Commission, the Chouteau County Planning Board, the Russell County Sportsmans Association, the Great Falls Conservation Council, and the Upper Missouri River Breaks Audubon Society. Copies of the EA were hand delivered to adjacent landowners by department personnel to provide an opportunity to explain the proposal and answer questions in person.

A number of issues were raised during the public comment period that are addressed in the Comment section of this Decision Notice.

*Chouteau*

## **ISSUES RAISED IN THE ENVIRONMENTAL ASSESSMENT (EA)**

Issues raised during the public comment period are presented in this section. Effects of the proposed conservation easement and potential consequences if the easement were not obtained are described in detail in the EA. Lands near the Harris Land and Cattle Company are being subdivided. This type of development is the greatest threat to wildlife habitat and the public's enjoyment of the wildlife resource in this area.

Conservation values on the Harris Land and Cattle Company property that would be protected in perpetuity by the conservation easement that might otherwise be threatened include: valuable wildlife habitat resources, public hunting access, aesthetic values, and traditional agricultural uses of the land. A conservation easement would require monitoring by MFWP, including periodic inspections and meetings with landowners.

## **SUMMARY OF PUBLIC COMMENTS**

As of February 18, 1998, the department received a total of 47 comments, including 35 written statements, and 12 oral comments or testimonials. Forty comments supported the proposal, 4 requested clarification of points on the EA while 3 opposed the proposal. The Chouteau County Commissioners do not support the proposal in its entirety. However, several positive aspects of the proposal such as limiting subdivision development were endorsed by the Commissioners at the public hearing. Comments from the public hearing and thus received during the 30 day comment period are addressed in the next section.

## **COMMENTS**

The following agencies, groups or organizations provided letters of support for the conservation easement on the Harris Land and Cattle Company property: Russell Country Sportsmans Association, Montana Wildlife Federation, The Mule Deer Foundation, Chouteau County Trailblazers, Pheasants Forever, Audubon Society, Flathead Wildlife Inc., Medicine River Canoe Club, and the Department of Natural Resources and Conservation. The many favorable comments centered around the need to protect the wildlife habitat values located on the Harris Land and Cattle Company property and to maintain public access for recreational purposes. A number of the commentators related to positive hunting experiences they had enjoyed on the property. Many comments observed that this property had a high potential for subdivision development if the easement was not secured.

Some issues were raised that were common to more than one respondent. For this reason, similar issues were consolidated for response.



**Issue 1. Provide for a system that allows equal chances for access for all hunters, not just family friends.**

**Response:**

To provide a mechanism for the general public to place a reservation and hunt the property, the Department shall offer to the landowner but not limit him to Block Management options. Should the landowner decide not to participate in Block Management, the landowner must develop an equally effective system for handling hunter requests within the easement terms. With or without Block Management, there will be a mechanism (permission slips, sign-in rosters or equally effective method) to document annual hunter use at the end of the general big game season. The landowner will allow free, equal opportunity access to all hunters on a first come, first served basis within the easement terms.

The easement document stipulates that hunting access be managed on a non-preferential and non-discriminatory basis. It reads "The Landowner, Landowner's immediate family, Landowners shareholders, partners, employees or immediate family of shareholders, partners, employees or immediate family shall not count towards satisfying the minimum number of hunting parties allowed on the land."

**Issue 2. The proposed hunter days are too high for a ranch located so close to Great Falls.**

**RESPONSE:**

The property has experienced hunter use (hunter days) ranging from over 1,000 during the fall hunting season when the ranch had unrestricted access to 350 hunter days under an outfitted scenario. The maximum proposed hunter days in the conservation easement for the fall hunting season is 624. This figure assumes 3 people constitute a party. In reality, we predict the actual use due to some parties constituting less than 3 hunters to be approximately 500-550 hunter days or a 30% increase in hunter days over the outfitted scenario that the ranch has operated under the past few years. The major difference will be that hunters will now be non-outfitted, public hunters. We also believe that the proposed hunter days and the park-and-walk hunting management plan will maintain the popular deer and game bird resource currently present on the property even considering it's relatively close distance to a large Montana city.

**Issue 3. Too much money for a hunting easement.**

**RESPONSE:**

The proposed conservation easement is not a "hunting" easement. The project is part of MFWP's Habitat Montana program authorized by the legislature in 1987. The primary focus of the program is to protect critical wildlife habitats in Montana by

preventing habitat subdivision while maintaining productive working agricultural operations. Free public hunting is only one of many terms that are proposed in this conservation easement.

**Issue 4. Who will maintain the grazing system after the initial costs are paid for?**

**RESPONSE:**

One of the terms proposed in this conservation easement is an improved grazing system. MFWP proposes to pay up to \$35,000.00 for the costs to implement this grazing system. Following the system implementation, it will be the landowners, and subsequent landowners responsibility to maintain the grazing system in the future within the terms of this conservation easement.

**Issue 5. There was a question regarding the review period the local planning authority is provided by law, and how this relates to the public comment period referenced in the Environmental Assessment.**

**RESPONSE:**

In order to minimize conflict with local comprehensive planning, state law (76-6-206 MCA) provides that all conservation easements shall be subject to review by the local planning authority in which the land lies prior to recording. The local planning authority has 90 days from receipt of the proposed conservation conveyance within which to review and comment upon the relationship of the proposed conveyance to comprehensive planning for the area.

A copy of the proposed conveyance was mailed to the Chouteau County Planner on January 16, 1998. On February 2 and February 23, 1998, MFWP representatives met in Fort Benton with the Chouteau County Commissioners and the local county planning authority. MFWP will not submit the proposed conservation easement for recording until comment has been received from the local planning authority, or if no comment is received, prior to the expiration of the 90 day period provided by statute.

This 90 day comment period of the local planning authority should not be confused with the 30 day public comment period required to satisfy the Montana Environmental Policy Act (MEPA) requirements of the proposed conservation easement.



**Issue 6. The "no outfitting" term may preclude a future recreational tax base in the future for Chouteau County.**

**RESPONSE:**

Any changes to the Montana tax code or the procedure by which properties are taxed is subject to the Montana legislature and is speculative. If recreation were to be taxed in the future, the legislature, in the process of authorizing the new tax or tax classification, would determine who will be responsible for tax payments and whether to tax the land, or recreational use of the land. The proposed purchase of a conservation easement on the Harris Land and Cattle Company property will not result in a change in the way taxes are currently assessed. Property taxes will remain the responsibility of the landowner.

**Issue 7. Who will have control over weed management on the property?.**

**RESPONSE:**

The landowner will remain responsible for weed control. Present and future landowners will have the right and responsibility to determine the type and quantity of noxious weed control within the terms of the proposed conservation easement. The only input MFWP will have is in reviewing and approving plans for aerial application of agrichemicals. The proposed conservation easement prohibits aerial application of agrichemicals without the review and approval of MFWP.

**Issue 8. Personal property may be vandalized due to increased public use of the area.**

**RESPONSE:**

No increase in vandalism is expected due to the purchase of a conservation easement on the property. The county roads near, through, and adjacent to the property already receive use during the hunting season and at other times of the year. Public use of the property as provided for by the conservation easement is limited to the fall hunting seasons only. Law enforcement activities, as in the past, will still be provided by Chouteau County and MFWP law enforcement personnel.

**Issue 9. Conservation easements are an erosion of private property rights.**

**RESPONSE:**

The landowners are voluntarily exercising their private property rights with the proposed conveyance of a conservation easement.

**Issue 10. Will there be birdwatching provisions in this easement?**

**RESPONSE:**

The proposed conservation easement provides for public recreational use during the fall hunting seasons for hunting only. However, birdwatching and other public activities are not precluded, but left to the discretion of the landowners, and all future landowners.

**Issue 11. There is a financial impact for the loss of fee-hunting by the previous outfitter on this property. There was no mention of this in the socio-economic analysis.**

**RESPONSE:**

MFWP recognizes that the conservation easement does not allow for outfitting on the Harris Land and Cattle property. This agreement does not effect the outfitters client base, it simply precludes the outfitter from using this particular private property.

**Issue 12. Conservation easements take private property off of the tax rolls.**

**RESPONSE**

The Harris Land and Cattle Company property will remain in private ownership, taxed as provided for by Montana law with taxes being paid by the landowner following the purchase of a conservation easement by MFWP.

**Issue 13. Trespass violations on to neighboring ranches.**

**RESPONSE:**

MFWP law enforcement personnel, as has occurred in Chouteau County, would continue to be the contact for trespass violations by hunters at the request of individual property owners.

**Issue 14. This easement will effect neighboring landowners property values and thus impact the next generation when it comes time to inherit their parents ranch or farm.**

**RESPONSE:**

At the present time, the department does not have any market data to suggest that the

proposed easement will have any effect on the value of neighboring land in the area. With general market trends pointing toward rising land values, the concern about the younger generation's ability to purchase family lands is understandable. Conservation easements are a tool used by many families to accomplish estate and family planning needs. MFWP is one of many organizations qualified to accept conservation easements in Montana.

### **DECISION**

Utilizing the EA and public comment, a decision must be rendered by MFWP which addresses the concerns and issues identified for this proposed conservation easement.

Both FWP's analysis and the majority of public input support preserving the existing land uses of the Harris Land and Cattle Company property. The land contains critical mule deer and sharp-tailed grouse habitat. The property also contains riparian habitats which have been targeted in MFWP's Habitat Montana program. All of these valuable resources may be threatened by land use changes which are presently occurring throughout Montana. The proposed conservation easement on the property would guarantee and maintain, in perpetuity, the historical uses by wildlife, ranchers, and the public.

After review of this proposal and the corresponding public support, it is my recommendation that MFWP purchase a conservation easement on the Harris Land and Cattle Company property, subject to approval by the Fish, Wildlife and Parks Commission.



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Mike Aderhold  
Regional Supervisor  
Great Falls, MT  
February 24, 1998